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diction merges the original cause of action so that it can not thereafter be the basis of a new suit in another state. *North Bank* v. *Brown,* 50 Me. 214, 79 Am. Dec. 609; *Baxley* v. *Linah,* 16 Pa. St. 241, 55 Am. Dec. 494; *McGilvray* v. *Avery,* 30 Vt. 538. Therefore it would seem that "a judgment is extinguished when, being used as a cause of action, it grows into another judgment.' *Garvin* v. *Garvin, 27* S. C. 472, 477, 4 S. E. 148; *Lawton* v. *Perry,* 40 S. C. 255, 265, 18 S. E. 861; *Gould* v. *Hayden,* 63 Ind. 443; *Price* v. *First Nat. Bank,* 62 Kan. 735, 84 Am. St. Rep. 419, 64 Pac. 637; *Whiting* v. *Beebe* 7 Eng. (Ark.) 421; *Purdy* v. *Doyle,* 1 Paige 558. However, the principal case prefers the other line of authorities, proceeding on the ground, as it says, that "a judgment on a judgment, being of the same dignity, does not fall within the general rule that a cause of action is merged in the judgment." *Weeks* v. *Pearson,* 5 N. H. 324; *Jackson* v. *Shaffer,* 11 Johns. 513; *Springs* v. *Pharr,* 131 N. C. 191, 42 S. E. 590, 92 Am. St. Rep. 775; *Armour* v. *Addington,* 1 Ind. Terr. 304, 37 S. W. 100; *Andrews* v. *Smith,* 9 Wend. 53; *Mumford* v. *Stocker,* 1 Cow. 178. To the argument that a debtor would be harassed by a large number of creditor's judgments, the court gave the succulent answer, in the principal case, that to avoid this, let the debtor pay his due.

JUDGMENT—IRREGULARITY OF PROCEEDING—COLLATERAL ATTACK.—The statute provided that summons was to be served by the sheriff of the county where the defendant was found, or by a person not a party to the action, and in the latter contingency to be returned with an affidavit of its service. A summons was served by the sheriff of Logan county, in Arapahoe county, not acting as sheriff, but as a person not a party to the action as provided by the statute, but the return lacked the required affidavit. The action went by default, and judgment was rendered thereon. In a later action this judgment was attacked collaterally on account of the irregularity in the return of summons, and *held,* the judgment was void. *Munson* v. *Pawnee Cattle Co.* (Colo. 1912), 126 Pac. 275.

It is believed that this case does not follow the better rule, for holding the return jurisdictional is an inducement to the opposite party not to defend, but to rely on defeating the proceeding collaterally on such grounds, or if he knows of the defect to let it pass with intent to defeat the judgment by it. This makes the result turn on trick, rather than on the merits of the case. If the party knows of the defect, let him speak, or thereafter hold his peace. *Ballinger* v. *Tarbell,* 16 Ia. 491, 85 Am. Dec. 527; *Smoot* v. *Judd,* 184 Mo. 508, 83 S. W. 481. See also, *Campbell* v. *Hays,* 41 Miss. 561, which is in direct conflict with the principal case on precisely the same state of facts. As bearing directly on the subject, 1 MICH. L. REV. 645; *Cole* v. *Butler,* 43 Me. 401; and 10 MICH. L. REV. 384.

MASTER AND SERVANT—INJURY TO RAILROAD EMPLOYE.—The decedent was a brakeman in the employ of the defendant company and was killed while crossing the switchyards of the company on his way home from work. The evidence showed that the accident was caused by a car backing against the decedent, that it happened in the night time, that there was no light on the